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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of	)	
	)	MM 95-138
Amendment of Section 73.202(b)	)	
Table of Allotments	)	RM ~~95~~-8684
FM Broadcast Stations	)	
(Casper, Wyoming)	)	
	)	

To: The Commission

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COMMENTS OPPOSING PROPOSED ALLOTMENTS

Mount Rushmore Broadcasting, Inc. ("Mt. Rushmore"), licensee of Radio Stations KQLT(FM)/KASS(FM), Casper, Wyoming,[1/] by its attorneys, and pursuant to Section 1.415(b) of the rules of the Federal Communications Commission ("FCC"), hereby files these comments opposing the proposed allotment of Channels 273A and 284A to Casper, Wyoming, because the proposed allotment will not serve the public interest. See Notice of Proposed Rulemaking, In the Matter of Amendment of Section 73.202(b) (Casper, WY), RM 95-8684 (rel. Aug. 28, 1995) ("Notice").

BACKGROUND

Hart Mountain Media, Inc. ("Hart"), Rule Communications ("Rule") and Bruce L. Erickson all have pending applications seeking Commission authority to operate a

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1/ Mt. Rushmore is therefore an interested party. See 47 C.F.R. § 1.415(a).

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new radio station on Channel 247A, Casper, Wyoming.[2/] Hart, Rule and Erickson now petition the Commission to allot channels 273A and 284A to Casper with cut-off protection for each application. Rule and Hart also seek Commission permission to amend their applications to designate channels 273A and 284A respectively, leaving Erickson as the lone applicant for Channel 247A. Granting the requests would permit each of these three mutually exclusive applicants to initiate service to Casper on a new FM channel, expanding the number of radio stations in Casper, a community of only 47,000 people, from 8 to 11.[3/]

DISCUSSION

The proposed allotment will not serve the public interest and should not be permitted. Initially, the Commission should stay this proceeding until it resolves the serious challenges to the Commission's commercial FM allotment and licensing rules raised by a Petition for Rulemaking filed over 3 1/2 years ago by the National Association of Broadcasters ("NAB"). On February 10, 1992, on the heels of the Commission's full review of its AM radio licensing policies,[4/] the NAB asked the Commission to undertake a similarly

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2/ Mt. Rushmore also was an applicant for channel 247A, but dismissed its application pursuant to an agreement with Hart to settle a petition to deny filed by Hart against Mt. Rushmore's application for FCC consent to acquire the license of KASS(FM).

3/ The current figure of 8 stations includes KUYO(AM), licensed to the adjacent community of Evansville, and KCSP(FM), a non-commercial FM radio station.

4/ See Report and Order in MM Docket No. 89-46, 5 FCC Rcd 4492 (1990).

thorough review of its FM radio licensing policies.[5] The NAB also asked the Commission to suspend the licensing and allotment of new commercial FM stations while reviewing the policies. In March, 1992, the Commission placed the petition on public notice.[6] More than fifteen Commission licensees and other interested parties filed comments, the vast majority supporting the NAB's proposal. Yet, in the almost four years since that time, the Commission has not resolved that proceeding. In fact, it has not even initiated the suggested rulemaking proceeding. In light of the long-standing pendency of the NAB Petition, the Commission should not act upon this Notice until it resolves the NAB's global challenge to the Commission's commercial FM licensing policies.

Even if the Commission does address the Notice, it should refuse to allot more channels to Casper for the precise reasons raised by the NAB Petition. The NAB Petition demonstrated that the Commission's ever-burgeoning allotment of commercial FM stations has created adverse technical and economic consequences, to the detriment of the public interest. The Commission should prevent a similar disaster in Casper and refuse the proposed multi-channel allotment.

Since 1980, the Commission generally has taken a purely "technical" approach to allotting new FM commercial stations.[7] That is, the Commission will allot a new channel to a community if the new station can be dropped in without violating the Commission's

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5/ See Review of Commission Commercial FM Allotment and Licensing Policy, RM 92-7933, Petition for Rulemaking, filed Feb. 10, 1992 ("NAB Petition").

6/ Public Notice, FCC Report No. 1882, Mar. 20, 1992.

7/ See Report and Order in BC Docket No. 80-90, 94 F.C.C.2d 152 (1983).

minimum separation requirements.[8/] The Commission's pursuit of this policy without considering other relevant factors has dramatically increased the number of FM radio stations nationwide. In 1980, there were 4599 licensed commercial FM stations; as of October 13, 1995, there are 5,274 licensed commercial FM stations and an additional 2,451 FM translators.[9/] In 1988, the average American listener received an average of 26.4 stations, regardless of that listener's community, a number undoubtedly higher today, given the significant increase in stations since that time.[10/] This expansion has led to absurd results. In Southampton, Bridgehampton, Westhampton and Calverton-Roanoke, New York,[11/] the staff, on its own motion, actually allotted more channels than sought by the parties. Each of four parties, through mutually exclusive proposals and counterproposals, sought allotment of one station to its respective community. Rather than pick amongst the four, the staff allotted a channel in each small community even though it had to impose site restrictions on three of the four to prevent short-spacing to existing stations.[12/]

8/ See 47 C.F.R. § 73.207(a). This technical approach to allotments was strengthened by the Commission's repudiation of the Carroll Doctrine in 1988. Policies Regarding Detrimental Effects of Proposed New Broadcast Stations on Existing Stations, 3 FCC Rcd 638, 639 (1988), recon. granted in part, 4 FCC Rcd 2276 (1989).

9/ See Broadcasting & Cable, Oct. 16, 1995, at p. 70.

10/ Even in the smallest radio markets, listeners received an average of 10.5 stations. See NAB National Radio Listening Study, published Nov. 2, 1988, at 3 (attached as Exhibit A to the NAB Petition).

11/ 7 FCC Rcd 4412 (1992).

12/ Id. at 4412-4413.

As the NAB demonstrated in its petition for rulemaking, the Commission's open-door policy has had a dual negative impact nationwide. First, the technical quality of FM reception has decreased as more stations have been packed into the spectrum. Stations receive less interference protection and, in most cases cannot improve their broadcasting range or lack incentive to improve technical facilities because of spectrum over-crowding.[13/] Second, spectrum overcrowding effectively decreases the value of all but the largest radio stations by limiting the stations' geographic access to a wider listener audience and greater advertising revenues.[14/] Unsurprisingly, from 1987 to 1990 the average FM radio station saw its net revenues decline by nearly 1% annually, and, after adjusting for inflation, the decrease approached almost 15%. The numbers are even more stark for small stations in small markets. In 1990 (before the recession), the average stand-alone station lost nearly $15,000, with one-quarter of these stations losing over $154,000.[15/] While economic conditions have improved in many markets since the time the NAB Petition was filed, radio stations in Casper as well as many other small markets still face difficult economic

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13/ The Commission's rules provide for a 30dB signal-to-interference ratio at the protected contour, while the international (CCIR) standard provides for 50dB signal-to-interference at the protected contour. NAB Petition at 8.

14/ Increased competition forces operators to narrowcast their programming to distinct segments of the listening audience, which concurrently limits their ability to stabilize financially by reaching a wider audience.

15/ See NAB Petition at 10 (citing Mark R. Fratnik, FM Station Financial Picture, published Feb. 10, 1991, p.1).

conditions.[16] Adding more channels to an already well-served market would only make it more difficult for existing stations to survive and serve the public.

The Commission's own review of the radio industry in 1992 confirmed the NAB's studies. The Commission's study, completed by the Mass Media Bureau, showed that the top 50 revenue-producing stations accounted for almost 12% of industry revenue in 1990 and roughly 50% of all industry profit. The study also showed that 75% of all radio operators had annual revenues of less than $1 million dollars. These operators, the bulk of the industry, lost money in 1990 and in many cases continue to do so.[17] As the study confirmed, "real dollar revenues are declining . . . . This trend reflects the continuing growth in the number of stations and the decline in real total revenue."[18] The bottom line is that while adding new channels may be technologically feasible, the increase in the number of failed or failing stations has confirmed that the FM market may well be saturated and that most new stations are not economically feasible. This is especially true in small markets such as Casper, Wyoming.

Recognizing the potential long-term damage to the entire FM radio industry, the NAB proposed a sensible solution which emphasizes meeting service needs by upgrading

16/ Housing starts (by permits issued), often considered the leading indicator of economic activity, have fallen in Casper by over 47% in the last year, while home sales have fallen by over 25%. Natrona County also saw a 15% drop in sales tax revenue within that period. See Economic Conditions: Casper and Natrona County, Wyoming; Second Quarter, 1995 (published by the Casper Area Economic Development Alliance), at 10-11, 13.

17/ FCC Mass Media Bureau, Overview of the Radio Industry, published Jan. 1992, at 1-5.

18/ Id. at 4.

the technical capabilities of existing facilities. Such a focus "would foster the provision of service from healthy competitors, rather than subjecting the entire FM radio market to destructive competition from an artificially-inflated mass of stations."[19] Under the NAB plan, an applicant proposing to upgrade existing service would receive a preference over an applicant proposing new service. Furthermore, an applicant for a new channel (or construction permit applicants seeking to operate on licensed but unused channels) would bear the burden of demonstrating that the proposed market has enough "economic activity to support the additional facility."[20] NAB also suggests that the Commission consider not only the number of channels allotted to a given community, but the actual number of channels receivable by listeners in that community to evaluate whether additional service is feasible or desired.[21]

Mt. Rushmore wholeheartedly agrees with the NAB's proposal. Applying that standard here demonstrates that allotting two new channels to Casper in addition to Channel 247A would not serve the public interest. Casper is located in Natrona County, the smallest recognized radio market in the United States. Natrona County's 62,00 residents (down from 66,400 in 1988) have a per capita income of $16,400, and a median household income of

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19/ NAB Petition at 17.

20/ In revising its AM regulatory scheme, the Commission adopted rules deleting fallow allotments and requiring new applicants for those facilities to meet more stringent interference-protection criteria.

21/ See NAB Petition at 4-5.

$35,172.[22/] In addition to the eight radio stations now located in Casper, local listeners receive a number of other radio signals.[23/] As the NAB National Radio Listening Study accurately notes, "[t]hese figures also point up the kind of intense competition faced by small market radio operations. While these stations may have no 'local competitor,' they face an intense battle for listeners with stations from other markets that are available to local listeners."[24/]

Casper radio stations not only compete with local and non-local radio stations, they also compete for advertising dollars with three local network-affiliated television stations and a cable television system operated by TCI, a major system operator.[25/] Adding three new FM radio stations would result in a total of 15 electronic media outlets in a community of only 47,000 people. A comparison with national figures show how saturated the Casper radio market is already. There are approximately 12,000 radio stations nationally serving a population of 250,000,000, an average of about one station per 21,000 people. Casper, on the other hand, has a total population of 47,000 people[26/] and 8 radio stations (5 FM, 3AM),

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22/ See Investing in Radio 1995 Market Report, Analysis of New York, NY market. In New York, the largest radio market, residents have a per capita income of $20,758 and a median household income of $45,885.

23/ According to the Spring 1994 Arbitron ratings, the local Casper radio stations accounted for only 80% of the shares of listeners 12 and over, down from 97% in Spring of 1987. Investing in Radio 1995 Market Report, Analysis of Casper, WY market.

24/ NAB National Radio Listening Study at 4.

25/ See Television and Cable Factbook 1995.

26/ Only 50,000 residents of Natrona County are over the age of 12, the traditional market cut-off point. See Investing in Radio 1995 Market Report, Analysis of Casper, WY an average of about one station per 5,875 people. Obviously, stations licensed to Casper already must fight for scarce listeners, especially when considering that residents also listen to numerous non-Casper stations. Adding three more stations (247A, 273A and 284A) would result in 11 radio stations licensed to a city of only 47,000 -- an average of one station for every 4,273 people. By way of comparison, the Commission would have to license 3908 radio stations to the 16,694,100 listeners in the New York radio market to achieve the same station-to-person density. Moreover, the prospects for survival of all 11 stations is questionable, given that BIA Consulting, Inc., which publishes Investing in Radio, gave the Casper market its lowest rating for confidence in future growth of estimated revenues -- before the proposal to add three new radio stations to the market.

The Commission must examine the fundamental question of whether adding two new channels to Casper in addition to Channel 247A would serve the public interest. As explained above, the reality of the Casper radio market demonstrates such an allotment would not serve the public interest but would ensure that one or more stations, including those freshly allotted, would fail. The Commission cannot allot stations which are destined to fail merely because technology permits such an allotment.[27/]

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market.

27/ See FCC v. Sanders Brothers Radio Station, 809 U.S. 470,473 (1940).

CONCLUSION

For the reasons stated above, Mount Rushmore Broadcasting, Inc. requests that the Commission deny the proposed additional allotment of two channels to the Casper, Wyoming radio market in addition to Channel 247A.

Respectfully submitted,

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October 19, 1995

CERTIFICATE OF SERVICE

I, H. Anthony Lehv, hereby certify that on the 19th of October, 1995, I sent copies of the foregoing Comments Opposing Proposed Allotments by United States mail, first-class, postage prepaid, to the following:

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